

BEFORE THE BOARD OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

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IN THE MATTER OF APPLICATION FOR	)	FINDINGS OF FACT AND CON-
RESERVATION OF WATER NO. 12334-02-r	)	CLUSIONS OF LAW OF APPLI-
BY THE UNITED STATES BUREAU OF LAND	)	CATION NO. 12334-02-r
MANAGEMENT	)	
	)	
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The above-entitled matter came on regularly for hearing starting on or about September 21, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The Applicant appeared by and through its counsel of record, Thomas Gai. The Montana Department of Natural Resources and Conservation appeared by and through its counsel of record, Richard Gordon. The Montana Department of Health and Environmental Sciences appeared by and through its counsel of record, Mona Jamison. The Montana Department of Fish and Game appeared by and through its counsel of record, F. Woodsite Wright and Clayton Herron. The fourteen applicant conservation districts appeared by and through their counsel of record, Gary Spaeth. Utah International Inc., appeared by and through its counsel of record, Urban Roth. Intake Water Company appeared by and through its counsel of record, Henry Loble. Witnesses were duly sworn, and oral and documentary evidence was introduced.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to the U.S. Bureau of Land Management, Application No. 12334-02-r:

### FINDINGS OF FACT

1. The U.S. Bureau of Land Management has applied for a reservation of 17,476 acre-feet of water per year (af/y) with an average diversionary flow rate of 75.76 cubic feet (cfs) from the Yellowstone River, to be used to provide full-service irrigation to 8,738 acres. Water would be diverted between May 15 and September 15. In order to divert 17,476 acre-feet during this period, a continuous diversion of the requested 75.76 cfs would be necessary (U.S. Bureau of Land Management, Application No. 12334-02-r, p. 2).

#### Findings Related to the Purpose of the Reservation (89-890(3)(a)).

2. The purpose of this reservation is to ensure that water will be available for the expected expansion of irrigation on federal lands by the U.S. Bureau of Land Management (U.S. Bureau of Land Management, Application No. 12334-02-r, p. 1).p.

3. It is established to the satisfaction of the Board that a purpose of the reservation has been shown (Finding 2).

#### Findings Related to the Need for the Reservation (89-890(3)(b)).

4. With substantial increases in agricultural production that could be realized by use of irrigation water in the Yellowstone River Basin, there is a need for a reservation of water in the Yellowstone River.

5. A reservation of water is needed because it will secure a priority date for future developments that is earlier than the priority dates such developments would have if permits were obtained immediately before construction or use began.

6. A reservation is needed because there is competition for water which may affect the ability of the Applicant to obtain a water right by permit in the future.

7. It is established to the satisfaction of the Board that the need for a reservation of water has been shown.

Findings Related to the Amount of Water Necessary for the Purpose of the Reservation 89-890(3)(c)).

8. The Bureau of Land Management intends to irrigate 8,738 new acres of land with full service irrigation between May 15 and September 15, with water from the Yellowstone River (Bureau of Land Management's Proposed Findings of Fact).

9. It is established to the satisfaction of the Board that the total amount of water necessary for the purpose of the reservation in the Yellowstone River for the Bureau of Land Management is 17,476 acre-feet total diversion per year with a average diversionary flow rate of 75.76

Findings Related to the Public Interest-(89-890(3)(d)).

10. New irrigation will increase income in the Yellowstone River Basin, both for the local farmers and the local businesses (Draft EIS, Vol. I, p. 6).

11. New irrigation will create much needed jobs (Draft EIS, Vol. I, p. 6).

12. A reservation sufficient to irrigate 8,738 acres is in the public interest because of the economic and agricultural consequences.

13. It is established to the satisfaction of the Board that the reservation of 17,476 acre-feet per year with an average diversionary flow rate of 75.76 is in the public interest and that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

#### CONCLUSIONS OF LAW

1. Chapter 8, Title 89, R.C.M. 1947, and in particular, Section 89-890, R.C.M. 1947, authorizes the adoption by the Montana Board of Natural Resources and Conservation of orders reserving water to qualified applicants for reservations of water.
2. If ordered adopted, a reservation must be ordered adopted in accordance with Chapter 8, Title 89, R.C.M. 1947, and any rules adopted thereunder.
3. The Applicant is entitled to apply to reserve waters within the State of Montana in accordance with Section 89-890, R.C.M. 1947, and any rules adopted thereunder.
4. All pertinent statutes and rules of the State of Montana have been adhered to in the review of this reservation Application, both by the Montana Department of Natural Resources and Conservation and by the Montana Board of Natural Resources and Conservation.
5. Based upon the above Findings of Fact, and specifically based upon any condition, limitation, or modification of the full Application appearing in said Findings, all pertinent criteria delineated at Section 89-890, R.C.M. 1947, and any rules adopted thereunder providing for the adoption of an order reserving water have been met.
6. Nothing found herein has bearing upon the status of water rights claimed by the Applicant other than those herein newly applied for, nor does anything found herein have bearing on the status of claimed water rights of any other party except in relation to those rights herein newly applied for, to the extent necessary to reach a conclusion herein.